

37617

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION

THE NEEDLE COKER COMPANY and
CHICAGO CARBON COMPANY,

Plaintiffs,

vs.

~~CITGO PETROLEUM CORPORATION~~
and PDV MIDWEST REFINING, L.L.C.,

Defendants.

No. 00 L 014496

**DEFENDANTS' JOINT RESPONSE TO
PLAINTIFFS' FIRST REQUESTS TO ADMIT**

Pursuant to Illinois Supreme Court Rule 216, defendants CITGO Petroleum Corporation and PDV Midwest Refining, L.L.C. (individually, "CITGO" and "PDVMR," or collectively, "Defendants"), for their joint response to the First Requests to Admit propounded by plaintiffs Needle Coker Company and Chicago Carbon Company (individually, "NCC" and "CCC," or collectively, "Plaintiffs"), state as follows:

GENERAL OBJECTIONS

Defendants object to Plaintiffs' First Requests to Admit to the extent they purport to impose obligations beyond those imposed by Illinois Supreme Court Rule 216.

RESPONSES AND SPECIFIC OBJECTIONS

1. The Facility located in Lemont, Illinois includes a refinery owned by PDVMR, a needle coking plant owned by Needle, a calciner plant owned by Needle and Chicago Carbon, and a facility owned and operated by Seneca.

ANSWER: Admitted.

2. Needle is an Illinois general partnership.

ANSWER: Admitted on information and belief.

3. Chicago Carbon is an Illinois general partnership.

ANSWER: Admitted on information and belief.

4. PDVMR is a limited liability corporation.

ANSWER: Admitted.

5. CITGO is a Delaware corporation.

ANSWER: Admitted.

6. CITGO served as Operator of the PDVMR Refinery pursuant to an operating agreement by which PDVMR vested in CITGO the authority to operate and manage the PDVMR Refinery.

ANSWER: Defendants admit that CITGO operates the Lemont, Illinois Refinery pursuant to a written agreement with PDVMR, and that such agreement speaks for itself.

7. CITGO was PDVMR's agent for purposes of operating and managing the PDVMR Refinery.

ANSWER: Defendants object to this Request on the grounds that it does not request the admission of the truth of a specified relevant fact or of the genuineness of a relevant document and, as such, exceeds the scope of allowable discovery under Supreme Court Rule 216. Subject to and without waiving this objection, Defendants admit that CITGO operates the Refinery pursuant to a written agreement with PDVMR, and that such agreement speaks for itself.

8. CITGO served as Operator of the Needle Coker Plant pursuant to a written operating agreement.

ANSWER: Defendants admit that CITGO is party to a written agreement with NCC which, among other things, appoints CITGO as "Operator" of the Needle Coker Plant. CITGO also admits that such agreement speaks for itself.

9. All of the electricity used at the Facility is supplied by ComEd.

ANSWER: Admitted.

10. All of the electricity used at the Facility runs through meters located at the PDVMR Refinery.

ANSWER: CITGO admits that electricity meters owned by ComEd are located on both PDVMR Refinery property and property believed to be owned by Unocal, and that all electricity used at the Facility runs through such meters.

11. As a matter of practice, course of conduct, and pursuant to agreement, ComEd bills CITGO, as Operator of the PDVMR Refinery, for all electricity used at the Facility irrespective of the ultimate user.

ANSWER: Defendants admit that ComEd bills CITGO for all electricity used at the Facility regardless of the end user.

12. CITGO bills the Other Users for electricity according to readings taken from meters located at the PDVMR Refinery.

ANSWER: Defendants admit that CITGO bills NCC, CCC and Seneca for electricity according to their electricity usage as determined by the electricity meters referenced in Defendants' Response to Request 10, above.

13. Each of the Users was supposed to pay its pro rata share of the total bill received from ComEd for the Facility's electricity, based

on the percentages of the Facility's electricity used by each of the Users.

ANSWER: Denied.

14. In accordance with the PDVMR operating agreement, CITGO had the ability and authority to bill Needle and Chicago Carbon for electricity provided by ComEd.

ANSWER: Defendants object to this Request on the grounds that it does not request the admission of the truth of a specified relevant fact or of the genuineness of a relevant document and, as such, exceeds the scope of allowable discovery under Supreme Court Rule 216. Answering further, Defendants state that the referenced agreement speaks for itself.

15. As a matter of practice, course of dealing, course of conduct and pursuant to a collective understanding reached over time, CITGO agreed to provide electricity to the Other Users at the same rate CITGO was charged by ComEd for electricity.

ANSWER: Denied.

16. CITGO did not state to Needle or Chicago Carbon that electricity was being provided to Needle or Chicago Carbon at any rate other than the rate being charged to CITGO or PDVMR by ComEd.

ANSWER: Denied. By letter dated September 2, 1997, CITGO explicitly told Plaintiffs that it had received "an electric rate reduction ... structured around ComEd's Contract Service rate." The letter also made clear that Plaintiffs would not share in the economic benefits of the rate reduction, explaining that "[t]he calculation of [Plaintiffs'] electric bill will remain unchanged," and that CITGO would "continue to pass along the same level of savings as in the past."

17. CITGO did not state to Needle or Chicago Carbon that CITGO was charging Needle or Chicago Carbon for electricity at a rate higher than CITGO or PDVMR was being charged for electricity by ComEd.

ANSWER: Denied. By letter dated September 2, 1997, CITGO explicitly told Plaintiffs that it had received "an electric rate reduction ... structured around ComEd's Contract Service rate." The letter also made clear that Plaintiffs would not share in the economic benefits of the rate reduction, explaining that "[t]he calculation of [Plaintiffs'] electric bill will remain unchanged," and that CITGO would "continue to pass along the same level of savings as in the past."

18. CITGO stated in monthly invoices sent to Needle and Chicago Carbon that CITGO was providing Needle and Chicago Carbon with a "Commonwealth Edison Billing for Your Account Based on Usage."

ANSWER: Defendants admit that the language quoted in Request 18 appeared on monthly invoices to NCC and CCC.

19. CITGO stated in monthly invoices sent to Needle and Chicago Carbon that CITGO was billing Needle and Chicago Carbon for their electricity usage at the rate being charged by ComEd.

ANSWER: Denied.

20. Prior to August 1997, ComEd charged CITGO and/or PDVMR for the Facility's electricity according to Rate 6L.

ANSWER: Admitted.

21. Rate 6L was available to large commercial and industrial customers that met certain usage requirements, and required approval by the regulatory authorities.

ANSWER: Admitted.

22. In August 1997, PDVMR and ComEd entered into the Service Contract, changing the Facility's electricity rate structure from Rate 6L to Rate CS.

ANSWER: Denied. Defendants admit that prior to August 1997, ComEd provided electricity to the Facility pursuant to Rate 6L and that in August 1997, PDVMR negotiated and entered into a new Electric Service Contract (the "ESC") with ComEd pursuant to which ComEd would provide electric service to the Facility at a negotiated rate structure based on ComEd's Rate CS.

23. Rate CS offered savings over the previous Rate 6L charges.

ANSWER: Defendants admit that the negotiated rate structure provided for in the ESC would be less than or equal to Rate 6L.

24. Rate CS lowered the Facility's total electricity bill.

ANSWER: Defendants admit that the rate structure provided for in the ESC reduced the Facility's total electricity bill.

25. CITGO did not disclose to Needle or Chicago Carbon the terms of the Service Contract.

ANSWER: Admitted. Defendants further admit that the terms of the ESC with ComEd were confidential, and that when CITGO notified Plaintiffs that it had entered into the rate reduction contract it also told Plaintiffs that the terms of the agreement were confidential.

26. CITGO did not disclose to Needle or Chicago Carbon the availability or application of Rate CS.

ANSWER: Defendants object to this Request on the grounds that the term "availability or application" is vague and ambiguous. Without waiving and subject to

this objection, the Request is denied. By letter dated September 2, 1997, CITGO explicitly told Plaintiffs that it had received "an electric rate reduction ... structured around ComEd's Contract Service rate." The letter also made clear that Plaintiffs would not share in the economic benefits of the rate reduction, explaining that "[t]he calculation of [Plaintiffs'] electric bill will remain unchanged," and that CITGO would "continue to pass along the same level of savings as in the past."

27. CITGO did not disclose to Needle or Chicago Carbon that CITGO and/or PDVMR were paying at a lower rate for electricity after August 1997 than CITGO or PDVMR had paid immediately prior to August 1997.

ANSWER: Denied. By letter dated September 2, 1997, CITGO explicitly told Plaintiffs that it had received a "rate reduction" from ComEd.

28. CITGO did not disclose to Needle or Chicago Carbon that after August 1997, CITGO and/or PDVMR were profiting from the resale of electricity to Needle and Chicago Carbon.

ANSWER: Denied. By letter dated September 2, 1997, CITGO explicitly told Plaintiffs that it had received "an electric rate reduction ... structured around ComEd's Contract Service rate." The letter also made clear that Plaintiffs would not share in the economic benefits of the rate reduction, explaining that "[t]he calculation of [Plaintiffs'] electric bill will remain unchanged," and that CITGO would "continue to pass along the same level of savings as in the past."

29. Prior to the execution of the Service Contract, several CITGO employees discussed the terms of the proposed but then unexecuted Service Contract.

ANSWER: Admitted.

30. Prior to the execution of the Service Contract, several CITGO employees discussed the possibility of continuing to bill Needle and Chicago Carbon after the Service Contract was to take effect at the previous Rate 6L, and apportioning the excess monies paid by Needle and Chicago Carbon to the costs of electricity used by the PDVMR Refinery.

ANSWER: Denied. Defendants admit that prior to the execution of the ESC with ComEd, certain CITGO employees discussed what effect, if any, the new contract would have on future billings to NCC and CCC. Ultimately, CITGO notified Plaintiffs that the rate used to calculate Plaintiffs' electric bill would "remain unchanged" despite the rate reduction that CITGO had obtained from ComEd. See September 2, 1997 Letter of L. Summerlott to A. Tan.

31. In internal e-mails and memoranda before the execution of the Service Contract in August 1997, several CITGO employees discussed that after the Service Contract was executed, PDVMR or CITGO could resell the electricity purchased from ComEd to Needle and Chicago Carbon at a profit.

ANSWER: Defendants admit that certain CITGO employees generated internal e-mails and memoranda concerning the proposed rate reduction agreement and that such documents speak for themselves.

32. On July 30, 1997, CITGO conducted an internal meeting ("July 30, 1997 Meeting") to discuss the proposed Service Contract and/or the terms thereof.

ANSWER: Admitted.

33. Several high-level CITGO officers participated in the July 30, 1997 Meeting.

ANSWER: Denied.

34. Jim Branch, a CITGO Vice President, participated in the July 30, 1997 Meeting.

ANSWER: Denied.

35. On July 30, 1997, Jim Branch was the highest ranking CITGO official and employee working at the PDVMR Refinery.

ANSWER: CITGO admits that, as of July 30, 1997, Jim Branch was a CITGO Vice President and the manager of the Lemont Refinery.

36. At the July 30, 1997 Meeting, several CITGO employees discussed whether PDVMR could resell the electricity it purchased from ComEd to Needle and Chicago Carbon at a profit.

ANSWER: Denied. Defendants admit that notes of the July 30, 1997 meeting reflect that the issue of whether PDVMR could "resell" electricity purchased from ComEd was raised, and that such documents speak for themselves.

37. At the July 30, 1997 Meeting, several CITGO employees discussed CITGO's decision not to disclose to Needle or Chicago Carbon the terms of the proposed Service Contract.

ANSWER: Denied. The ESC required that the parties maintain the terms of the agreement in confidence. Defendants admit that the participants at the July 30, 1997 meeting discussed whether and to what extent they could disclose information concerning the rate reduction agreement to Plaintiffs but deny that any "decision not to disclose" had been made. Answering further, Defendants state that on September 2, 1997, CITGO disclosed to Plaintiffs that it had obtained a rate reduction from ComEd, the terms of which were confidential, but that the rate used to calculate Plaintiffs' bill would not change. See September 2, 1997 letter of L. Summerlott to A. Tan.

38. At the July 30, 1997 Meeting, several CITGO employees discussed CITGO's decision not to disclose to Needle or Chicago Carbon the favorable new rate structure of Rate CS available to the Facility pursuant to the proposed Service Contract.

ANSWER: Denied. The ESC required that the parties maintain the terms of the agreement in confidence. Defendants admit that the participants at the July 30, 1997 meeting discussed whether and to what extent they could disclose information concerning the rate reduction agreement to Plaintiffs but deny that any "decision not to disclose" had been made. Answering further, Defendants state that on September 2, 1997, CITGO disclosed to Plaintiffs that it had obtained a rate reduction from ComEd, the terms of which were confidential, but that the rate used to calculate Plaintiffs' bill would not change. See September 2, 1997 letter of L. Summerlott to A. Tan.

39. At the July 30, 1997 Meeting, several CITGO employees discussed the desirability of deflecting any questions from Needle or Chicago Carbon about the cost of electricity.

ANSWER: Denied. Defendants admit that CITGO employees at the July 30, 1997 meeting discussed whether and to what extent they could disclose information concerning the ESC to Plaintiffs and the need to avoid any disclosures that could be construed to be a breach of that agreement.

40. At the July 30, 1997 Meeting, several CITGO employees developed and adopted what they called an "action plan" ("Action Plan").

ANSWER: Defendants admit that there exists a document entitled "Meeting Notes – Discussion on Billing Structure as Impacted by ComEd Rate Reduction" which pertains to a meeting that was held on July 30, 1997, and that such document contains a sub-heading entitled "Action Plans and Responsibilities."

41. The Action Plan is referenced in an internal CITGO memorandum entitled "Meeting Notes - Discussion on Billing Structure as Impacted by ComEd Rate Reduction" ("July 30, 1997 Memorandum").

ANSWER: Defendants admit that there exists a document entitled "Meeting Notes -- Discussion on Billing Structure as Impacted by ComEd Rate Reduction," and that such document contains a sub-heading entitled "Action Plans and Responsibilities."

42. A true and correct copy of the July 30, 1997 Memorandum is attached to the Complaint as Exhibit A.

ANSWER: Admitted.

43. Pursuant to the Action Plan, CITGO created or caused to be created a simulated Rate 6L bill.

ANSWER: Denied. After the ESC became effective, CITGO continued to bill NCC and CCC for electricity at the same level of savings previously enjoyed by NCC and CCC under Rate 6L. The method of calculating the bills to NCC and CCC did not change.

44. Pursuant to the Action Plan, CITGO distributed the simulated Rate 6L bill to Needle, Chicago Carbon and Seneca.

ANSWER: Denied. Defendants admit, however, that after the ESC became effective, CITGO continued to bill NCC and CCC for electricity at the same level of savings that NCC and CCC had previously enjoyed under Rate 6L and that method of calculating the bills to NCC and CCC did not change.

45. Pursuant to the Action Plan, CITGO billed Needle, Chicago Carbon and Seneca for electricity using Rate 6L.

ANSWER: Denied. Defendants admit, however, that after the ESC became effective, CITGO continued to bill NCC, CCC and Seneca for electricity using Rate 6L.

46. After the execution of the Service Contract Rate 6L was no longer in effect, and was replaced by Rate CS.

ANSWER: Denied. Defendants admit, however, that after the ESC became effective, CITGO paid ComEd for all electricity supplied to the Facility at the negotiated rate structure provided for in the contract and that CITGO continued to bill NCC, CCC and Seneca at the same rate they had previously paid under Rate 6L.

47. Pursuant to the Action Plan, CITGO subtracted the simulated Rate 6L total paid by Needle, Chicago Carbon and Seneca from the Rate CS total billed by ComEd under the Service Contract.

ANSWER: Denied. Defendants admit, however, that after the ESC became effective, CITGO paid ComEd for all electricity supplied to the Facility at the negotiated rate structure provided for in the contract and that CITGO continued to bill NCC, CCC and Seneca at the same rate they had previously paid under Rate 6L.

48. The difference between the total actually paid to CITGO and/or PDVMR by Needle, Chicago Carbon and Seneca, and the total actually billed by ComEd to CITGO and/or PDVMR, constituted the amount CITGO paid on behalf of PDVMR for the "Refinery portion."

ANSWER: Denied. Defendants admit, however, that after the ESC became effective, CITGO paid ComEd for all electricity supplied to the Facility at the negotiated rate structure provided for in the contract and that CITGO continued to bill NCC, CCC and Seneca at the same rate they had previously paid under Rate 6L.

49. The July 30, 1997 Memorandum, attached to the Complaint as Exhibit A, summarized the July 30, 1997 Meeting.

ANSWER: Defendants admit that the referenced document speaks for itself.

50. The July 30, 1997 Memorandum reflected that certain CITGO employees stated that under the Service Contract, "Needle Coker and UCD will continue to be 'profit centers' to the refinery -- i.e., we will sell them electricity at a higher rate than we pay.

ANSWER: Defendants admit that the referenced document contains the language quoted in the Request.

51. The July 30, 1997 Memorandum reflected that certain CITGO employees discussed whether they should "disclose any information about the new rate structure to UCD."

ANSWER: Defendants admit that the referenced document contains the language quoted in the Request.

52. The July 30, 1997 Memorandum reflected that certain CITGO employees discussed the need to deflect any questions from Needle or Chicago Carbon about the cost of electricity, stating in part:

Should the Refinery divulge any of the rate reduction information to UCD? This would avoid the situation in which questions regarding the billing structure come up. However, questions regarding the allocation of savings could arise If the decision is made not to disclose any information about the new rate structure to UCD, we will need to develop a response to their inevitable questions regarding the reduction efforts.

ANSWER: Defendants admit that CITGO employees at the July 30, 1997 meeting discussed whether and to what extent they could disclose the terms of the ESC to Plaintiffs and the need to avoid any disclosures that could be construed to be a breach of that agreement. Defendants further admit that the referenced document contains the language quoted in the Request.

53. The July 30, 1997 Memorandum reflected that certain CITGO employees developed the Action Plan that included the following item:

Continue simulating a separate 6L bill as currently done. The billing methodology will be as follows: Complete 6L bill for Refinery, UCD, Needle Coker and Seneca. Determine UCD, Needle Coker and Seneca bill as previously done. The difference between the combined bill issued from ComEd and what is owed by UCD, Needle Coker and Seneca will comprise the Refinery portion.

ANSWER: Defendants admit that the referenced document contains the language quoted in the Request.

54. CITGO implemented the Action Plan after the Service Contract became effective in August 1997.

ANSWER: Defendants deny the assertion made in Request 54 on the grounds that the term "implemented the Action Plan" is vague and ambiguous. Defendants admit, however, that after the ESC between ComEd and PDVMR became effective, CITGO paid ComEd for all electricity supplied to the Facility at the negotiated rate structure provided for in the contract and that CITGO continued to bill NCC, CCC and Seneca at the same rate they had previously paid under Rate 6L.

55. CITGO either generated Rate 6L bills, or obtained "simulated" Rate 6L bills from ComEd, on a monthly basis.

ANSWER: Defendants admit that, after the ESC became effective, CITGO continued to bill NCC and CCC for electricity on a monthly basis, that such bills were calculated under Rate 6L, and that CITGO prepared the bills to Plaintiffs.

56. Each month, from August 1997 through December 1999, CITGO generated invoices to Needle and Chicago Carbon ("CITGO Invoices") using Rate 6L, rather than the Rate CS set forth in the Service Contract.

ANSWER: Denied. Defendants admit that, after the ESC became effective, CITGO continued to generate bills for NCC and CCC that were calculated using Rate 6L and that the ESC provided a rate structure that was based on ComEd's Rate CS.

57. Each month, from August 1997 through December 1999, CITGO sent the CITGO Invoices to Needle and Chicago Carbon.

ANSWER: Admitted.

58. True and correct copies of the CITGO Invoices distributed between August 1997 and December 1999 to Needle and Chicago Carbon are attached to the Complaint as Group Exhibits B and C, respectively.

ANSWER: Admitted.

59. In the CITGO Invoices, CITGO stated to Needle and Chicago Carbon that they were being billed for their electricity consumption at Rate 6L.

ANSWER: Defendants admit that all parties were aware that CITGO was billing NCC and CCC for electricity usage based on Rate 6L but deny that the referenced documents specifically refer to "Rate 6L."

60. In the CITGO Invoices, CITGO stated to Needle and Chicago Carbon that they were being billed for their electricity consumption at the rate being charged CITGO and/or PDVMR by ComEd for electricity.

ANSWER: Denied.

61. Under the heading "DESCRIPTION," the CITGO Invoices state:
"COMMONWEALTH EDISON BILLING FOR YOUR
ACCOUNT BASED ON USAGE."

ANSWER: Defendants admit that the referenced documents contain the language quoted in this Request.

62. Under the heading "DESCRIPTION," the CITGO Invoices include columns itemizing metered usage and ComEd billing rates.

ANSWER: Denied. Defendants admit that under the heading "DESCRIPTION," the CITGO invoices include the following four columns: "LINE ITEM," "METERED USAGE," "RATES," and "CALCULATED BILLING."

63. The rates itemized on the CITGO Invoices do not reflect the CS rates actually charged by ComEd pursuant to the August 1997 Service Contract.

ANSWER: Defendants admit that under the ESC, CITGO was billed according to a rate structure that was based on ComEd's Rate CS. Defendants further admit that, after the ESC became effective, CITGO continued to bill NCC and CCC for electricity at the same level of savings that NCC and CCC had previously enjoyed under Rate 6L, and that the rates itemized in the referenced invoices generally did not reflect the rate structure provided to CITGO under the ESC.

64. The rates itemized on the CITGO Invoices reflect the 6L rates no longer charged by ComEd after the execution of the Service Contract in August 1997.

ANSWER: Defendants admit that under the ESC, CITGO was billed according to a rate structure that was based on ComEd's Rate CS. Defendants further admit that, after the ESC became effective, CITGO continued to bill NCC and CCC for electricity at the same level of savings that NCC and CCC had previously enjoyed under Rate 6L, and that the rates itemized in the referenced invoices generally did not reflect the rate structure provided to CITGO under the ESC.

65. Each month, from August 1997 through December 1999, CITGO generated documents summarizing the electricity usage and the

corresponding charges to be paid by Needle, Chicago Carbon, Seneca and the Refinery ("Summaries").

ANSWER: Denied. Defendants admit that during the referenced time period CITGO generated documents showing the actual electricity usage of CCC (a/k/a Unocal Chemicals Division), NCC, Seneca and CITGO and the Rate 6L dollar value of such usage.

66. True and correct copies of the Summaries sent by CITGO to Needle and Chicago Carbon between August 1997 and December 1999 (but without the handwriting) are attached to the Complaint as Group Exhibit D.

ANSWER: Denied. CITGO did not send the referenced documents to NCC or to CCC after the ESC went into effect.

67. The Summaries stated that they totaled the combined electricity charges billed by ComEd for the Facility.

ANSWER: Denied.

68. The Summaries detail type-written amounts charged to Needle, Chicago Carbon and Seneca employing Rate 6L, rather than Rate CS.

ANSWER: CITGO admits that the dollar amounts reflected on the referenced documents were calculated using Rate 6L.

69. The type-written amounts attributed in the Summaries to Needle, Chicago Carbon and Seneca are the same charges reflected in the CITGO Invoices.

ANSWER: Admitted.

70. The type-written charges on the Summaries reflect the amounts paid by Needle, Chicago Carbon and Seneca to CITGO and/or PDVMR.

ANSWER: Admitted.

71. The type-written charges on the Summaries attributed to the PDVMR Refinery were incorrect.

ANSWER: Denied. The dollar amounts reflected in the referenced documents were not represented to be "charges."

72. The type-written charges on the Summaries attributed to the PDVMR Refinery were higher than the amounts paid by CITGO or PDVMR to ComEd for electricity used at the PDVMR Refinery.

ANSWER: Denied. The dollar amounts reflected in the referenced documents were not represented to be "charges." Defendants do admit, however, that the dollar amounts reflected in the referenced documents, which were calculated using Rate 6L, were higher than the amounts paid by CITGO under the ESC.

73. The type-written charges on the Summaries reflecting the "Total" amount charged by ComEd for electricity use at the Facility were calculated by CITGO employees.

ANSWER: Denied. Defendants deny that such amounts were represented to be the "amount charged by ComEd." Answering further, Defendants state that the dollar amounts reflected in the referenced documents were calculated by CITGO employees using a computer program developed years earlier by a former employee of The Unoven Company.

74. The type-written charges on the Summaries reflecting the "Total" amount charged by ComEd for electricity use at the Facility were incorrect.

ANSWER: Denied. The "Total" dollar amounts reflected in the referenced documents were not represented to be the "amount charged by ComEd."

75. The type-written charges on the Summaries reflecting the "Total" amount charged by ComEd for electricity use at the Facility were higher than the total amount paid by CITGO and/or PDVMR on behalf of the Users.

ANSWER: Denied. The "Total" dollar amounts reflected in the referenced documents were not represented to be the "amount charged by ComEd." Defendants do admit, however, that the dollar amounts reflected in the "Total" columns of the referenced documents, which were calculated using Rate 6L, were higher than the amounts paid by CITGO under the ESC.

76. CITGO employees made handwritten notes and/or calculations on some of the monthly Summaries.

ANSWER: Admitted.

77. The handwritten notes and/or calculations which appear on the Summaries reflect the amounts paid by CITGO and/or PDVMR for the PDVMR Refinery's electricity usage.

ANSWER: Denied. Defendants admit that after the ESC became effective, CITGO paid ComEd for all electricity supplied to the Facility at the negotiated rate structure provided for in the contract. Defendants further admit that the handwritten notes and/or calculations that appear on the referenced documents reflect CITGO's internal handling of various accounting and invoicing issues.

78. Each month from September 1997 through December 1999, CITGO sent the Summaries to Needle and Chicago Carbon.

ANSWER: Denied.

79. The handwritten notes and/or calculations which appear on the Summaries were made by CITGO employees after copies of the Summaries were sent by CITGO to Needle and Chicago Carbon.

ANSWER: Denied. CITGO did not send the referenced documents to NCC or to CCC after the ESC went into effect.

80. The handwriting which appears on the monthly Summaries comprising Group Exhibit D to the Complaint did not appear on the monthly Summaries sent by CITGO to Needle and Chicago Carbon.

ANSWER: Denied. CITGO did not send the referenced documents to NCC or to CCC after the ESC went into effect.

81. CITGO allocated all of the costs savings made available under Rate CS to the PDVMR Refinery.

ANSWER: Denied as phrased. Defendants admit, however, that they alone obtained a rate reduction from ComEd and that this rate reduction was not provided to Plaintiffs.

82. Since August 1997, CITGO has collected approximately \$3 million in electricity costs from Needle and Chicago Carbon attributable to electricity used by the PDVMR Refinery.

ANSWER: Denied. CITGO has at all times billed and collected from NCC and CCC for their actual electricity usage at rates based on ComEd's Rate 6L.

83. By generating the CITGO Invoices and Summaries, CITGO prevented Needle and Chicago Carbon from discovering the terms of the Service Contract with ComEd.

ANSWER: Denied. By letter dated September 2, 1997, CITGO explicitly told Plaintiffs that it had received "an electric rate reduction ... structured around ComEd's Contract Service rate." The letter also made clear that Plaintiffs would not share in the economic benefits of the rate reduction, explaining that "[t]he calculation of [Plaintiffs'] electric bill will remain unchanged," and that CITGO would "continue to pass along the

same level of savings as in the past." Further, CITGO did not send the so-called "Summaries" to NCC or to CCC after the ESC went into effect.

84. By generating the CITGO Invoices and Summaries, CITGO prevented Needle and Chicago Carbon from discovering the elimination of the Rate 6L billing structure, and the adoption of the Rate CS billing structure.

ANSWER: Denied. By letter dated September 2, 1997, CITGO explicitly told Plaintiffs that it had received "an electric rate reduction ... structured around ComEd's Contract Service rate." The letter also made clear that Plaintiffs would not share in the economic benefits of the rate reduction, explaining that "[t]he calculation of [Plaintiffs'] electric bill will remain unchanged," and that CITGO would "continue to pass along the same level of savings as in the past." Further, CITGO did not send the so-called "Summaries" to NCC or to CCC after the ESC went into effect.

85. By generating the CITGO Invoices and Summaries, CITGO prevented Needle and Chicago Carbon from discovering that CITGO was subsidizing the electricity costs of the PDVMR Refinery by inflating the electricity costs paid by Needle and Chicago Carbon.

ANSWER: Denied. By letter dated September 2, 1997, CITGO explicitly told Plaintiffs that it had received "an electric rate reduction ... structured around ComEd's Contract Service rate." The letter also made clear that Plaintiffs would not share in the economic benefits of the rate reduction, explaining that "[t]he calculation of [Plaintiffs'] electric bill will remain unchanged," and that CITGO would "continue to pass along the same level of savings as in the past." Further, CITGO did not send the so-called "Summaries" to NCC or to CCC after the ESC went into effect.

86. CITGO developed a plan to prevent Needle and Chicago Carbon from discovering the cost of the electricity used at the Facility.

ANSWER: Denied. By letter dated September 2, 1997, CITGO explicitly told Plaintiffs that it had received "an electric rate reduction ... structured around ComEd's Contract Service rate." The letter also made clear that Plaintiffs would not share in the economic benefits of the rate reduction, explaining that "[t]he calculation of [Plaintiffs'] electric bill will remain unchanged," and that CITGO would "continue to pass along the same level of savings as in the past."

87. As reflected in the July 30, 1997 Memorandum, attached to the Complaint as Exhibit A, CITGO representatives discussed and adopted a plan to deflect questions and inquiries from Needle and Chicago Carbon.

ANSWER: Defendants object to this Request on the grounds that it is duplicative of prior requests. Without waiving this objection, Defendants repeat and incorporate by reference their response to Request 39, above, as if fully set forth herein.

88. CITGO representatives consulted with its legal counsel about the ComEd rate reductions under the Service Contract.

ANSWER: Defendants admit that they consulted with legal counsel concerning their rights and obligations under the ESC.

89. CITGO representatives consulted with its legal counsel on how to maintain the confidentiality of the ComEd rate reductions under the Service Contract.

ANSWER: Defendants admit that they consulted with legal counsel concerning their rights and obligations under the ESC.

90. On August 6, 1997, CITGO employee Rupa Natarajan wrote a letter ("August 6, 1997 Letter") to a CITGO lawyer about the ComEd rate reductions.

ANSWER: Admitted.

91. A true and correct copy of the August 6, 1997 Letter is attached to the Complaint as Exhibit E.

ANSWER: Admitted.

92. In part, the August 6, 1997 Letter asks: "If we continue to operate in the 'Confidentiality mode', how should Refinery personnel react to any future questions that may be directed from Unocal to Refinery personnel?"

ANSWER: Defendants admit that the referenced document contains the language quoted in the Request.

93. Through internal e-mails and memoranda, CITGO representatives discussed the ComEd rate reductions under the Service Contract.

ANSWER: Admitted.

94. Through internal e-mails and memoranda, CITGO representatives discussed the concealment from Needle and Chicago Carbon of the ComEd rate reductions under the Service Contract.

ANSWER: Denied. Defendants admit that certain CITGO employees generated internal e-mails and memoranda concerning whether and to what extent they could disclose the terms of the ESC and the need to avoid any disclosure that could be construed as a breach of that agreement. Defendants further admit that such documents speak for themselves.

95. On September 2, 1997, CITGO employee Lois Summerlott wrote a letter ("September 2, 1997 Letter") on behalf of CITGO to Chicago Carbon.

ANSWER: Admitted.

96. A true and correct copy of the September 2, 1997 Letter is attached to the Complaint as Exhibit F.

ANSWER: Admitted.

97. In part, the September 2, 1997 Letter states: "[T]he method of billing Needle Coker / UCD will remain the same. The Refinery will continue to pass along the same level of savings as in the past."

ANSWER: Admitted.

98. The "method of billing" referenced in the September 2, 1997 Letter did not remain the same after the execution of the Service Contract.

ANSWER: Denied.

99. On September 24, 1997 CITGO employee Glenn Rabinak sent an email to other CITGO employees ("September 24, 1997 E-mail").

ANSWER: Admitted.

100. A true and correct copy of the September 24, 1997 E-mail is attached to the Complaint as Exhibit G.

ANSWER: Admitted.

101. The September 24, 1997 E-mail, captioned: "Heads Up: Ron Lee is Asking Questions about Electricity," stated in part that "the form of the letter sent by Lois [Summerlott] was carefully scripted based upon extensive legal counsel."

ANSWER: Defendants admit that the referenced document contains the language quoted in this Request.

102. Ron Lee is a Unocal employee, a member of Needle's governing Executive Committee, and serves as general manager to Chicago Carbon.

ANSWER: Admitted on information and belief.

103. On more than one occasion, Ron Lee asked CITGO representatives about the ComEd rate reductions under the Service Contract.

ANSWER: Admitted.

104. In October 1997, some internal CITGO e-mails ("October 1997 E-mails") referenced CITGO's concealment of the ComEd rate reductions from Needle and Chicago Carbon.

ANSWER: Defendants admit that the referenced documents speak for themselves.

105. True and correct copies of the October 1997 E-mails are attached to the Complaint as Group Exhibit H.

ANSWER: Defendants admit that true and correct copies of some e-mails dated October 1997 are attached to Plaintiffs' Complaint as Group Exhibit H.

106. The October 1997 E-mails were distributed and read by some CITGO employees.

ANSWER: Admitted.

107. Included among the recipients of the October 1997 E-mails was Jim Branch, a CITGO Vice President.

ANSWER: Denied. Defendants admit that Jim Branch is identified as a "cc" recipient at the end of one e-mail dated October 15, 1997 and that Jim Branch was a CITGO Vice President as of that date.

108. One e-mail from CITGO employee Jim Tancredi, dated October 15, 1997, referenced inquiries by Ron Lee, the response of a

CITGO employee, and stated: "Good answers for Round 1. Glad your [sic] on our side. I believe this may be a 14 rounder though so keep your gloves high."

ANSWER: Defendants admit that the referenced document contains the language quoted in this Request.

109. An e-mail from CITGO employee Rupa Natarajan, dated October 16, 1997, stated that a decision to disclose the ComEd bill would provide Needle and Chicago Carbon with "a clear insight into how much the Refinery uses and pays."

ANSWER: Defendants admit that the referenced document contains the language quoted in this Request.

110. CITGO knew that the amount charged on the CITGO Invoices for Needle's and Chicago Carbon's electricity use was not the amount actually charged by ComEd for Needle's and Chicago Carbon's electricity use.

ANSWER: Denied. ComEd did not charge separately for Plaintiffs' electricity usage. Defendants admit, however, that after the effective date of the ESC, CITGO paid ComEd for all electricity supplied to the Facility at the negotiated rate structure provided for in the contract and that CITGO continued to bill NCC, CCC and Seneca at the same rate they had previously paid under Rate 6L.

111. CITGO did not disclose to Needle or to Chicago Carbon that the amount charged on the CITGO Invoices for Needle's and Chicago Carbon's electricity use was not the amount actually charged by ComEd for Needle's and Chicago Carbon's electricity use.

ANSWER: Denied. By letter dated September 2, 1997, CITGO explicitly told Plaintiffs that it had received "an electric rate reduction ... structured around ComEd's Contract Service rate." The letter also made clear that Plaintiffs would not share in the economic benefits of the rate reduction, explaining that "[t]he calculation of [Plaintiffs']

electric bill will remain unchanged," and that CITGO would "continue to pass along the same level of savings as in the past."

112. CITGO knew that the amount charged on the CITGO Invoices for Needle's and Chicago Carbon's electricity use was an amount calculated by CITGO based on rates that no longer were in effect with ComEd for the Facility.

ANSWER: Defendants admit that CITGO knew that the amounts charged to NCC and CCC were calculated under ComEd's Rate 6L, and that CITGO paid ComEd for all electricity used at the Facility at the negotiated rate structure provided for in the ESC.

113. CITGO did not disclose to Needle or to Chicago Carbon that the amount charged on the CITGO Invoices for Needle's and Chicago Carbon's electricity use was an amount calculated by CITGO based on rates that no longer were in effect with ComEd for the Facility.

ANSWER: Denied. By letter dated September 2, 1997, CITGO explicitly told Plaintiffs that it had received "an electric rate reduction ... structured around ComEd's Contract Service rate." The letter also made clear that Plaintiffs would not share in the economic benefits of the rate reduction, explaining that "[t]he calculation of [Plaintiffs'] electric bill will remain unchanged," and that CITGO would "continue to pass along the same level of savings as in the past."

114. CITGO knew that the amounts listed on the Summaries as the PDVMR Refinery's portion of electricity costs were not the amounts paid by CITGO and/or PDVMR to ComEd on behalf of the PDVMR Refinery.

ANSWER: Denied. The dollar amounts reflected in the referenced documents were not represented to be the costs of the Refinery's electricity usage. Defendants admit,

however, that the amounts paid by CITGO to ComEd under the ESC differed from the dollar amounts reflected in the referenced documents.

115. CITGO knew that the amounts listed on the Summaries as the Facility's total electricity costs were not the amounts paid by CITGO and/or PDVMR to ComEd on behalf of the Facility.

ANSWER: Denied. The dollar amounts reflected in the referenced documents were not represented to be "Facility's total electricity costs." Defendants admit, however, that the amounts paid by CITGO to ComEd under the ESC differed from the dollar amounts reflected in the referenced documents.

116. CITGO did not disclose to Needle or to Chicago Carbon that the amount paid by CITGO and/or PDVMR to ComEd for the electricity used at the PDVMR Refinery was millions of dollars less than the amount reflected on the Summaries.

ANSWER: Denied. Defendants admit that at the time they entered the ESC, they did not tell Plaintiffs the rate structure or amount that CITGO would be paying to ComEd under the ESC, which information was confidential. However, CITGO did tell Plaintiffs that it had received a rate reduction from ComEd, and that despite such rate reduction, Plaintiffs would continue to pay the same rate they had paid in the past. See September 2, 1997 letter of L. Summerlott to A. Tan. Answering further, Defendants state that documents containing information about amounts paid by CITGO to ComEd under the ESC were made available to Plaintiffs in connection with an audit of the Needle Coker plant in 2000, after CITGO obtained authorization from ComEd to disclose the information for the purpose of the audit.

117. As a general partner in Needle, PDVMR owed fiduciary duties of loyalty and care to Needle.

ANSWER: Defendants object to this Request on the grounds that it does not request the admission of the truth of a specified relevant fact or of the genuineness of a relevant document and, as such, exceeds the scope of allowable discovery under Supreme Court Rule 216.

118. As a general partner in Needle, PDVMR owed fiduciary duties of loyalty and care to its fellow partners, Chicago Carbon and Lemont Carbon, Inc.

ANSWER: Defendants object to this Request on the grounds that it does not request the admission of the truth of a specified relevant fact or of the genuineness of a relevant document and, as such, exceeds the scope of allowable discovery under Supreme Court Rule 216.

119. PDVMR's fiduciary duties of loyalty and care obligated PDVMR to act with utmost good faith and honesty in all dealings and transactions related to Needle.

ANSWER: Defendants object to this Request on the grounds that it does not request the admission of the truth of a specified relevant fact or of the genuineness of a relevant document and, as such, exceeds the scope of allowable discovery under Supreme Court Rule 216.

120. PDVMR did not inform Needle of the Rate CS charged by ComEd under the Service Contract.

ANSWER: Denied. Defendants admit that they did not inform Plaintiffs of the actual rate structure provided in the ESC, which information was confidential. However, by letter dated September 2, 1997, CITGO informed Plaintiffs that PDVMR and ComEd had entered into a rate reduction agreement structured around "ComEd's Contract Service rate."

121. PDVMR did not inform Chicago Carbon of the Rate CS charged by ComEd under the Service Contract.

ANSWER: Denied. Defendants admit that they did not inform Plaintiffs of the actual rate structure provided in the ESC, which information was confidential. However, by letter dated September 2, 1997, CITGO informed Plaintiffs that PDVMR and ComEd had entered into a rate reduction agreement structured around "ComEd's Contract Service rate."

122. PDVMR did not inform Lemont Carbon, Inc. of the Rate CS charged by ComEd under the Service Contract.

ANSWER: Denied. Defendants admit that they did not inform Plaintiffs of the actual rate structure provided in the ESC, which information was confidential. However, by letter dated September 2, 1997, CITGO informed Plaintiffs that PDVMR and ComEd had entered into a rate reduction agreement structured around "ComEd's Contract Service rate."

123. CITGO took for its benefit, or for the benefit of PDVMR, the monetary portion of savings under Rate CS attributable to the electricity usage of Needle, Chicago Carbon, and Seneca.

ANSWER: Denied. Defendants admit that during the relevant time period CITGO paid ComEd for all electricity supplied to the facility at the negotiated rate structure provided for in the ESC and that CITGO continued to bill NCC, CCC and Seneca under Rate 6L, which rate was generally higher than the negotiated contract rate paid by

CITGO.

124. CITGO was aware that ComEd agreed to the reduction under Rate CS based on the total amount of electricity used at the Facility,

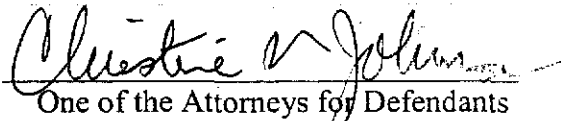
which included the electricity used by (among others) Needle, Chicago Carbon, and Seneca.

ANSWER: Denied. Defendants admit that the negotiated rate structure provided for in the ESC was based on total electricity usage at the Facility.

125. CITGO did not disclose to Needle or Chicago Carbon that the electricity cost savings resulting from the application of Rate CS would be retained by CITGO and/or PDVMR.

ANSWER: Denied. By letter dated September 2, 1997, CITGO explicitly told Plaintiffs that it had received "an electric rate reduction ... structured around ComEd's Contract Service rate." The letter also made clear that Plaintiffs would not share in the economic benefits of the rate reduction, explaining that "[t]he calculation of [Plaintiffs'] electric bill will remain unchanged," and that CITGO would "continue to pass along the same level of savings as in the past." As such, Plaintiffs clearly knew that any savings resulting from the ESC would inure to the benefit of CITGO and/or PDVMR, and not Plaintiffs.

By:



One of the Attorneys for Defendants
CITGO Petroleum Corporation and
PDV Midwest Refining L.L.C.

David M. Stahl
Scott C. Solberg
Michelle K. Moritz
Christine M. Johnson


EIMER STAHL KLEVORN & SOLBERG (#37647)

122 S. Michigan Avenue, Suite 1776
Chicago, Illinois 60603
(312) 435-9345

VERIFICATION

I, Glenn Rabinak, state that I am Manager, Business Services & Economic Planning for CITGO Petroleum Corporation in Lemont, Illinois and am authorized to execute this verification. I have read the foregoing and know the contents thereof. Under penalties as provided by law pursuant to Section 1-109 of the Illinois Code of Civil Procedure, I, Glenn Rabinak, certify that the statements set forth in Defendants' Joint Response to Plaintiffs' First Requests to Admit are true and correct to the best of my information and belief. I certify that I believe such statements to be true.

Dated: June 7, 2001


Glenn Rabinak